

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

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MILLIPORE CORPORATION,	)	Civil Action No. 11-cv-10221 DPW
MILLIPORE AB, and	)	
MILLIPORE SAS,	)	MILLIPORE’S MOTION TO DISMISS
Plaintiffs,	)	ALLPURE’S UNENFORCEABILITY
	)	COUNTERCLAIM AND
v.	)	<u>AFFIRMATIVE DEFENSE</u>
	)	
ALLPURE TECHNOLOGIES, INC.,	)	
Defendant.	)	
-----X	)	

The plaintiffs Millipore Corporation, Millipore AB, and Millipore SAS (“Millipore”) hereby move, pursuant to Rule 12(c) of the Federal Rules of Civil Procedure to dismiss the unenforceability counterclaim and affirmative defense of AllPure Technologies, Inc. (“AllPure”).

As more fully set forth in the Memorandum of Reasons filed herewith in support of this Motion, the Defendant neither identifies the legal theory supporting, nor any facts surrounding, its allegations of unenforceability, leaving Millipore to guess about the nature of its allegations. AllPure’s conclusory assertion of unenforceability does not rise to the level required by Rule 8. In addition, it would be reasonable to conclude that AllPure’s allegation of unenforceability is based on an as yet to be formulated theory of inequitable conduct, a common unenforceability theory advanced by those accused of patent infringement. Allegations of inequitable conduct are judged under Rule 9(b), and AllPure’s assertions fall far short of meeting the obligations imposed by Rule 9(b).

AllPure’s unenforceability counterclaim and affirmative defense should be dismissed pursuant to Rules 8, 9, and 12(c) of the Federal Rules of Civil Procedure.

MILLIPORE CORPORATION,  
MILLIPORE AB, and  
MILLIPORE SAS

By their attorneys,

/s/ Lawrence P. Cogswell III, Ph.D.  
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Dated: September 23, 2011.

LOCAL RULE 7.1(A)(2) CERTIFICATION

I, Lawrence P. Cogswell III, Ph.D., hereby certify that I spoke by telephone with Danni Tang, Esq., counsel for the defendant, in a good faith effort to resolve or narrow the issues on September 16, 2011, and further communicated by email, and was unable to resolve the issues addressed in this motion.

/s/ Lawrence P. Cogswell III, Ph.D.  
Lawrence P. Cogswell III, Ph.D.

CERTIFICATE OF SERVICE

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified in the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on September 23, 2011.

/s/ Lawrence P. Cogswell III, Ph.D.

Lawrence P. Cogswell III, Ph.D.